

DOCUMENT RESUME

02345 - [A1332304]

[Rejection of All Bids as Unreasonably High]. B-188336. May 6, 1977.

Decision re: Guideline Maintenance Co.; by Paul G. Dembling, Acting Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1300).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Department of the Army: Corps of Engineers.

Authority: A.S.P.R. 2-404.1(b)(vi). 4 C.F.R. 20.2(b)(1).

B-186441 (1976). B-186445 (1976). B-187092 (1976).

The low bidder on a mowing services contract protested the rejection of all bids as unreasonably high and the subsequent resolicitation of the requirement. Although resolicitation after exposure and rejection of all bids tend to discourage competition, such action is permissible where there is a compelling reason to do so. Possible noncompliance with the terms of lower priced contracts for similar work was not for resolution under GAO bid protest procedures. Protests against the solicitation requirements were filed after bid opening and were therefore untimely. (Author/SC)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

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FILE: B-188336

DATE: May 6, 1977

MATTER OF: Guideline Maintenance Company

DIGEST:

1. Where bids on Corps of Engineers mowing service solicitation were considerably higher than recent contract prices for mowing the same and similar sites cogent reason existed for rejection of all bids and resolicitation of requirements. Although resolicitation after exposure and rejection of all bids tends to discourage competition, such action is permissible where, as here, compelling reason exists to do so.
2. Possible noncompliance with terms of current lower priced contracts for similar work is for resolution by contracting agency during course of contract administration rather than for resolution under GAO bid protest procedures.
3. Portion of protest, filed after bid opening, which questions adequacy of IFB specifications, is untimely and will not be considered on merits. GAO procedures require such protests to be filed prior to bid opening. See 4 C. F. R. § 20.2(b)(1) (1976).

Guideline Maintenance Company (Guideline), the low bidder on Army Corps of Engineers (Corps) Invitation for Bids (IFB) DACW63-77-B-0025, protests the rejection of all bids as unreasonably high and the subsequent readvertisement of the requirement. The solicitation covers mowing services at Belton Lake, Texas, during the summer of 1977. Award under the new solicitation has been withheld pending resolution of Guideline's protest.

Guideline argues that previous contracts for this work have not been successful and that the unusually poor "working conditions" at Belton Lake justify its high bid price. The protester further states that the award prices for the preceding Belton Lake and other recent mowing service contracts in the Fort Worth district

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were so low as to result either in lower performance levels than required by the Government or in an eventual termination for default. Guideline argues that readvertisement of the requirement after bid opening and exposure of its bid price amounts to a prohibited auction technique.

Guideline's bid on the original solicitation, at \$9.52 per acre was considerably lower than the other bids submitted. However, all bids, including Guideline's were considerably higher than the contract prices for the preceding and current fiscal years for similar services at other sites in the Corps' Fort Worth district. For example, the highest priced award for mowing services in the Fort Worth district currently is \$15.00 per acre and the agency reports that the terrain of that site is somewhat comparable to Belton Lake's. Additionally, at Belton Lake successive mowing contracts had been awarded last year at \$9.64, \$12.50 and \$17.50 per acre. The agency reports that the difficulty in performance experienced under the first contract, which resulted in a termination for default, was due to the fact that the contractor was over-extended and abandoned all of its contracts. The replacement contract was also terminated for default when the contractor refused to install roll over bars on its tractors. Mowing was successfully completed under the third contract at \$17.50 per acre, the highest price paid during the last mowing season. The agency states that this price was for the final mowing of the season and was high because the grass had grown excessively as a result of the prior termination actions. Finally, the lowest bid price under the current resolicitation for Belton Lake is \$15.00 per acre.

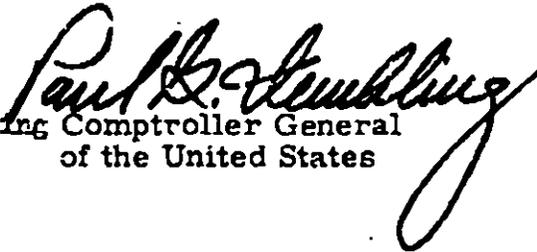
Armed Services Procurement Regulation (ASPR) § 2-404.1(b)(vi) provides that an IFB may be cancelled if all otherwise acceptable bids received are at unreasonable prices. Contracting officers are given broad powers of discretion in deciding whether to cancel an IFB for this reason and readvertise the requirement. Our Office will not interfere with such a decision unless it is unreasonable. Building Maintenance Specialists, Inc., B-186441, September 10, 1976, 76-2 CPD 233; Ward Leonard Electric Co., Inc., B-186445, July 29, 1976, 76-2 CPD 98. Although a resolicitation after all bids have been exposed and rejected tends to discourage competition, such resolicitation is legally permissible where a "compelling reason" to do so exists. Based on the facts outlined above, we see no reason to question the reasonableness of the determination that all bids for

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Belton Lake under the cancelled solicitation were unreasonably high. While Guideline expresses dissatisfaction with permitting the contracting officer to make this decision, we see no reason to question the authority granted by the above-cited regulation in this regard. As to any possible noncompliance with the terms of current contracts for these services, this is a matter for resolution by the Corps in the course of contract administration rather than by this Office under its bid protest procedures. Crowe Rope Company, B-187092, August 18, 1976, 76-2 CPD 174.

In rebuttal to the agency's report, Guideline questions whether the allegedly low prices at which the mowing service contracts in the Fort Worth district have been awarded were due to an inadequate description of the Government's minimum needs. Guideline's argument, however, is dismissed because our bid protest procedures require that protests based on improprieties in the specifications apparent prior to bid opening must be filed in our Office by that time. 4 C.F.R. § 20.2(b)(1) (1976). Guideline did not protest the specifications until its bid was rejected. This portion of its protest is therefore untimely.

The protest is denied.


Acting Comptroller General
of the United States